

VZCZCXRO8310
PP RUEHPB
DE RUEHPB #0401/01 2680022
ZNY CCCCC ZZH
P R 250022Z SEP 06
FM AMEMBASSY PORT MORESBY
TO RUEHC/SECSTATE WASHDC PRIORITY 4634
INFO RHMFISS/DEPT OF JUSTICE WASHINGTON DC
RUEHBY/AMEMBASSY CANBERRA 0898
RHHMUNA/HQ USPACOM HONOLULU HI
RUEHPB/AMEMBASSY PORT MORESBY 2057

C O N F I D E N T I A L SECTION 01 OF 02 PORT MORESBY 000401

SIPDIS

SIPDIS

FOR EAP?ANP AND L/EAP

E.O. 12958: DECL: 9/25/2016

TAGS: [PREL](#) [PP](#)

SUBJECT: FOREIGN POLICY IMPLICATIONS OF SAREI VS. RIO TINTO

REF: SEPT 21 E-MAIL FROM EAP/ANP

CLASSIFIED BY: Robert Fitts, Ambassador, U.S. Embassy Port
Moresby, Department of State.
REASON: 1.4 (b)

1. (SBU) Summary: The PNG government of the day has taken and communicated a decision to the Embassy that it does not want to be seen as standing in the way of the hearing of the subject case in California courts. Accordingly, we must assess that there are no compelling foreign policy objections vis-a-vis PNG (and Bougainville.) In particular, we do not concur with the representations that an adverse decision on the case would create a backlash against the GPNG. This of course, does not speak to the broader foreign policy implications of the Alien Tort Statute. We do note, however, that as long as the case goes on, the Autonomous Bougainville government will be tempted to avoid the difficult decisions and hard work of development in favor of waiting for pie in the sky via ATS. End Summary

2. (U) Australia, whose mining companies are active around the world, understandably would like the Alien Torts Statute to be as limited in scope as possible. In particular, the non-paper (ref) refers to the requirement that local remedies be exhausted prior to application of the ATS. That certainly has not been the case with Sarei.

3. (U) In fact, PNG's statutes require as well that all litigation on natural resource projects be brought in PNG courts. In an earlier iteration of the case (2001 or so) PNG agreed that it would not charge the plaintiffs for violating that provision in order to pave the way for having the case transferred back here.

4. (SBU) But the worm has turned. I was officially informed by both the Minister for Bougainville Affairs and by the Prime Minister's Chief Secretary (the country's top civil servant although it is a political appointment) that the government did not want to be seen as standing in the way of Bougainville's claim. They wanted the case to proceed. [This had the air of, we hope the US courts will quickly dispose of this troublesome issue. Alas, I had to remind them that the US courts were neither quick nor subject to this Embassy's influence.] In fact, they said that they were opposed to having the case in PNG courts as any setbacks to Bougainville's side would be seen there as a sign the PNG government was trying to keep them under PNG's thumb.

5. (SBU) The Bougainville peace negotiations are largely over, though sensitivities are still very near the surface. We are now in the lengthy run up to the proffered 2015-2020 plebiscite on possible independence. The Bougainville Affairs Minister noted that his main job is making sure the Bougainville leadership sees the PNG government as helpful and supportive of

its efforts to set the stage for that plebisite.

6.(SBU) There is lots that is troubling about this case. Bougainvillians actually believe that, if the case proceeds, they will pocket \$10 billion and become a rich province again. [Actually, if Bougainville and PNG history is any guide, most of that chimeral \$10 billion would instead wind up in the Brisbane housing market in the name of individual Bougainville leaders.] While the case is ongoing, there is every incentive for the leadership to wait for its ship to come in and not make the responsible and hard decisions that are required. Also, there is no guarantee that a future PNG government - which could take office after the May 2007 elections, might not reverse course. This would be particularly true if lurid testimony was made public of the conduct of PNG forces during that troubled conflict.

7.(U) But, the government of the day has taken the firm position that it does not want to stand in the way of the litigation. Therefore, this Embassy cannot argue that there are compelling foreign policy reasons for the case not to go forward. [This is vis-a-vis PNG. The Department and DOJ will have to weigh the world wide implications of ATS cases.]

8.(C) In particular, the assertion made by the Australian Embassy rep that a loss by the plaintiffs would result in a backlash against the PNG government is unfounded. Such a backlash would come only if the PNG government had been opposing the case. I checked with the Australian High Commission here and they share my assessment on this specific point. [The GOA may be trying to limit ATS application and so marshalling every argument it can think of. This one, though, does not hold water.]

9.(C)Comment: The GPNG position is a bit strange if viewed from its own financial perspective. As a 25% of BCL, it would

PORT MORES 00000401 002 OF 002

presumably have to front up its share of any award that was made. However, given the way things are done here, the general suspicion is that PM Somare has been given a financial incentive to reverse the previous government's position on the case. Certainly, it would be very typical of Melanesia if what the government saw as in its nation's interest also redounded to the individual benefit of its leadership. It is worthy of note that Paul Nero, a plaintiff and the current PNG CG in Brisbane, is very much a Somare man.
FITTS